

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

17-MJ-5112-MJR

KEVIN MYSZKA,

Defendant.

**GOVERNMENT'S RESPONSE TO DEFENDANT'S
MOTION TO MODIFY CONDITIONS OF RELEASE**

The defendant, KEVIN MYSZKA, through his attorney, Terrence M. Connors, Esq., filed a motion to modify the defendant's conditions of release. See Docket No. 32. The UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, Brendan T. Cullinane, Assistant United States Attorney, of counsel, hereby files the government's response to the defendant's motion.

FACTS AND PROCEDURAL HISTORY

On January 19, 2017, the Drug Enforcement Administration ("DEA") arrested the defendant pursuant to an arrest warrant. On that same date, the defendant appeared before this Court for his initial appearance. See Docket No. 1. The defendant is charged with knowingly, intentionally, and unlawfully possessing with the intent to distribute, and distribution of, cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1), between on or about November 3, 2016, and on or about December 3, 2016. Id. At the initial appearance, the government moved for detention of the defendant.

On January 31, 2017, the parties appeared before this Court for a detention hearing, wherein the government renewed its motion to detain the defendant. See Docket No. 6. On February 1, 2017, the Court ordered the defendant released pursuant to the Order Setting Conditions of Release. See Docket Nos. 7-8.

On September 20, 2017, the defendant filed a motion for modification of the release conditions. See Docket No. 25. On September 26, 2017, the Court granted the defendant's motion. See Docket No. 27.

On December 14, 2017, the defendant filed a motion to modify the release conditions. See Docket No. 32. On December 19, 2017, the Court issued a scheduling order in which the Court ordered that the government file a response, if any, by December 21, 2017. See Text Order, dated December 19, 2017. Based on a calendar entry error made by the Assistant United States Attorney assigned to this matter, the government did not respond on the date scheduled for a response. On December 22, 2017, the Court granted the defendant's motion. See Docket No. 36.

While the government acknowledges that the Court has already granted the defendant's motion, the government submits that, if the government had filed a timely response, the government would have opposed the defendant's motion for the following reasons. Specifically, on October 13, 2017, the parties appeared before this Court after the defendant tested positive for the use of a controlled substance in violation of the Order Setting Conditions of Release. See Docket No. 28. At that time, the Court instructed the defendant that the Court would not tolerate any additional violations and imposed an additional condition of his release. Id. As a result, the government submits that had it filed a timely

response, the government would have opposed the defendant's motion to modify the conditions of release.

CONCLUSION

While the Court has already granted the defendant's motion to modify the Order Setting Conditions of Release, the government submits that, had the government filed a timely response, the government would have opposed the defendant's motion for the reasons contained herein.

DATED: Buffalo, New York, December 22, 2017.

JAMES P. KENNEDY, JR.
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